



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 23, 2012

VIA FIRST CLASS MAIL

William McGinley  
Patton Boggs LLP  
2550 M Street, NW  
Washington, DC 20037

RE: MUR 6528  
Michael Grimm for Congress  
Lisa Lisker, Treasurer

Dear Mr. McGinley:

This is in response to your letter dated February 21, 2012, which we received that day requesting a 30-day extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on or before March 27, 2012.

If you have any questions, please contact me on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

*Frankie D. Hampton*  
Frankie D. Hampton, Paralegal  
Complaints Examination and  
Legal Administration

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PATTON BOGGS LLP

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March 27, 2012

William J. McGinley  
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VIA E-MAIL & COURIER

Jeff S. Jordan, Esquire  
Supervisory Attorney  
Office of the General Counsel  
Federal Election Commission  
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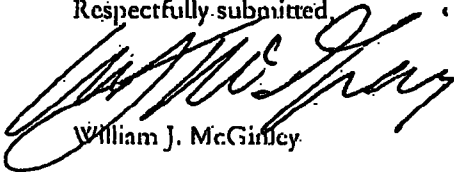
Re: MUR 6528  
Michael Grimm for Congress  
and Lisa Lisker, as Treasurer

Dear Mr. Jordan:

Please find attached the response of our clients, Michael Grimm for Congress and Lisa Lisker, as Treasurer, to the notification from the Federal Election Commission that a complaint was filed against them in the above-referenced matter.

Please do not hesitate to contact us with any questions.

Respectfully submitted,



William J. McGinley

Attachments

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the matter of )  
 ) MUR 6528  
Michael Grimm for Congress )  
and Lisa Lisker, as Treasurer )

**RESPONDENTS' RESPONSE TO THE COMPLAINT**

Respondents Michael Grimm for Congress and Lisa Lisker, as Treasurer, hereby respond to the complaint filed against them in the above-referenced matter. The complaint is legally deficient because it fails to satisfy the requirements set forth in the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("Commission") regulations. Put simply, the complaint contains two types of deficient allegations: First, unverifiable allegations supposedly relayed to the New York Times by *anonymous* sources whose identities are undisclosed and whose credibility is indeterminable; and, second, a single allegation in the New York Times article that is sourced to an identified individual but that describes conduct that does *not* violate the Act or Commission regulations. Both types of allegations are legally deficient under the Act and Commission precedents, thus the complaint fails to meet the threshold for a reason to believe finding. For the reasons set forth below, we respectfully request that the Commission dismiss the complaint, take no further action, and close the file.

**STATEMENT OF RELEVANT FACTS**

As a first-time candidate in the 2010 election cycle, Michael Grimm ran a successful campaign for election to the United States House of Representatives to represent the 13th District of New York. The complaint alleges that Michael Grimm for Congress received campaign contributions during that election cycle from members of the Mosdot Shuva Israel congregation and followers of its mystic rabbi, Yoshiyahu Yosef Pinto. On January 27,

2012, the New York Times published an article entitled "*Rabbi's Followers Cast Doubts on Congressman's Fundraising*" (the "New York Times article"). As set forth in detail below, the New York Times article raised vague allegations of "questionable" campaign fundraising that were attributable entirely to *anonymous* sources. The complaint in this matter is simply a regurgitation of the New York Times article, which it both restates in its body and attaches as an exhibit, and does not purport to contain a single additional allegation based on the complainant's personal knowledge. The underlying New York Times article was shoddy journalism; for the same reasons, the complaint here is legally deficient and must be dismissed.

#### DISCUSSION

Under the Act, regulations, and Commission precedents, a complaint cannot rest on undisclosed sources and must describe an actual violation of law. The Commission must dismiss any complaint that fails to meet these basic standards and close the file.

- I. **Those allegations in the complaint based on unidentified sources in the New York Times article are an insufficient basis for a reason to believe finding under the Act.**

The only allegations contained in the complaint that even arguably allege unlawful conduct are unverifiable and not credible because they are attributed solely to anonymous sources in the New York Times article. The Act provides, and Commission precedents hold, that allegations based on anonymous sources are not credible and thus legally are an insufficient basis for the Commission to find reason to believe. The Commission must adhere to the Act and follow its precedents and find no reason to believe in this matter.

The Act specifically provides that the "Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." 2 U.S.C. § 437g(a)(1). The

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plain language and spirit of this provision provides that anonymous sources cannot sustain a reason to believe finding. *See* MUR 6296 (Kenneth R. Buck, *et al.*), Statement of Reasons of Commissioners Caroline C. Hunter, Donald F. McGahn and Matthew S. Petersen at 6-7 (“[T]he Commission must identify the sources of information and examine the facts and reliability of those sources to determine whether they ‘reasonably [give] rise to a belief in the truth of the allegations presented.’” (second alteration in original)). Moreover, this statutory provision means that Congress clearly intended that the identity of the sources of the allegation must be disclosed so that the Respondent has a fair and meaningful opportunity to respond. If a Respondent is denied the source’s identity, such as here, where the allegations are based on anonymous sources in a newspaper article, finding reason to believe under such circumstances would manifestly violate Respondent’s due process rights and the principles of fundamental fairness.

The Commission also needs each source’s identity so that it has the information necessary to weigh the credibility of allegations. “The Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find RTB and thereby commence an investigation.” MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter and Donald F. McGahn at 6, n. 12; *see also* MUR 5141 (James P. Moran, Jr., *et al.*), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold at 2 (“Unless based on a complainant’s personal knowledge, a source of information reasonably giving rise to a belief in the truth of the allegations must be identified.”). “Plainly, mere ‘official curiosity’ will not suffice as the basis for FEC investigations, as it might in [other agencies].” FEC v. Machinists Non-Partisan Political League, 655 F.2d 380, 388 (D.C. Cir. 1981). *Herc*, the

allegations are *not* based on the complainant's personal knowledge, but rather merely on regurgitation of anonymous statements in the New York Times article.

The unambiguous statutory command requiring that a complaint meet basic standards of credibility are echoed in the Commission's own regulations. These provide procedural safeguards to ensure that complaints meet minimum thresholds of accountability, specificity and credibility before the Commission may vote to authorize an investigation. Specifically, Commission regulations provide, *inter alia*, that the contents of the complaint *must* be sworn to and signed in the presence of a notary; the complaint shall be notarized; all statements contained in the complaint are subject to the statutes governing perjury and false statements (18 U.S.C. § 1001); the complaint must differentiate between statements based on personal knowledge and those based on information and belief; statements that are not based upon personal knowledge must be accompanied by an identification of the source of the information giving rise to the complainant's belief in the truth of such statements; and the complaint must clearly recite facts describing an actual violation of a statute or regulation over which the Commission has jurisdiction. 11 C.F.R. § 111.4(b)-(d); *see also* 2 U.S.C. § 437g(a)(1). Complaints based on anonymous sources fail those requirements. *See* MURs 5977 and 6005 (American Leadership Project), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter and Donald F. McGahn at 6, n. 20 ("[A]dherence to the Commission's regulations regarding sources of information contained in complaints cautions against accepting as true the statements of anonymous sources (especially since the Commission's regulations expressly prohibit the consideration of anonymous complaints)."). Here, the complainant does not identify a single allegation based on his personal knowledge, nor does he provide the requisite "identification of the source of information which gives rise to the complainant's belief in the truth" of his allegations as required by 11 C.F.R. §

111.4(d)(2). Instead, he simply attaches and repackages the anonymously sourced New York Times article to submit frivolous complaints against the Respondents about subjects as to which the complainant has no knowledge whatsoever apart from the dubious information he has obtained from the Times.

The New York Times article, and the complaint incorporating it, rely on three anonymous sources raising vague allegations of "questionable" campaign fundraising:

**Anonymous Source #1:** The first anonymous source alleges that Mr. Grimm pressured him to provide \$20,000 in contributions to the campaign. Compl. ¶ 12. This anonymous source alleges that he personally gave Mr. Grimm \$5,000 in cash near the FBI building in lower Manhattan, that he later provided a separate \$5,000 check from one of the anonymous source's friends, and that Mr. Grimm subsequently demanded the anonymous source provide another \$10,000 in contributions. Compl. ¶¶ 12-13.<sup>1</sup>

**Anonymous Source #2:** The second anonymous source claims that Mr. Grimm traveled to his office "to solicit a legal contribution," Compl. ¶ 18, Attachment.<sup>2</sup> That anonymous source avers only that, as he was making his legal contribution, Mr. Grimm told him that there are ways to work around the campaign rules. *Id.*<sup>3</sup>

**Anonymous Source #3:** The third anonymous source alleges that he picked up \$25,000 in contribution checks for the campaign from an Israeli national. Compl. ¶ 15. This anonymous source alleges that he picked up the checks and gave them to one of Rabbi

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<sup>1</sup> In restating the allegations from the New York Times article's anonymous source #1, the complainant deceptively omitted the reference to the \$5,000 check from the source's friend, presumably because it indicates that the \$20,000 could be raised lawfully from friends. See 11 C.F.R. § 111.4(d)(3).

<sup>2</sup> The complainant revealingly omitted the word "legal" when he restated the New York Times article's account of the second anonymous source's allegation.

<sup>3</sup> Significantly, the second anonymous source does not allege that either Mr. Grimm or he actually *did* anything to work around those rules. See 11 C.F.R. § 111.4(d)(3).

Pinto's aides, Ofer Biton, who supposedly ultimately gave them to Mr. Grimm. *Id.* The third anonymous source also suggests that the \$25,000 in contribution checks ultimately were reported by the campaign as coming from five different people. Compl. ¶ 17.

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The Commission may not shift the burden of proof to Respondents in the instant matter by requiring them to respond to unverifiable allegations from anonymous, unidentified sources that are not based in any way on the complainant's personal knowledge. *See* MUR 4850 (Deloitte & Touche, LLP, *et al.*), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 ("The burden of proof does not shift to a respondent merely because a complaint is filed."). Allegations made by anonymous sources to a news reporter are inherently unreliable; because press interviews are not subject to the procedural safeguards of 18 U.S.C. § 1001 or other laws prohibiting false statements, anonymous sources are free to lie to reporters with impunity. It would completely pervert the purpose of 11 C.F.R. § 111.4(c) if its requirements could so easily be circumvented by simply attaching an anonymously sourced newspaper article and submitting it as an FEC complaint, and proceeding on such a complaint would violate the Act's express limitation that "[t]he Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." 2 U.S.C. § 437g(a)(1).<sup>4</sup>

Moreover, the anonymous allegations in the New York Times article also lack the requisite specificity that would permit a reasonable person the opportunity to identify contributions that potentially resulted from the alleged activity, or even to enable the

<sup>4</sup> Importantly, the use of anonymous sources to make the allegations against Respondents contained in the New York Times article does not even satisfy the New York Times' Public Editor's journalistic standards. Arthur Brisbane, The Public Editor, *The Quarterback's Tangled Saga*, N.Y. Times, Feb. 5, 2012, at SR12 ("But when something as serious as a person's reputation is at stake, it's not enough to rely on anonymous sourcing, effectively saying 'trust us.'").



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Commission to investigate what contributions might be implicated. In this respect, the allegations here are not even sufficient to require a campaign treasurer to reevaluate the legality of any specific contribution under 11 C.F.R. § 103.3(b)(2). The allegations do not identify the contributions allegedly at issue, and do not satisfy the standard of "new evidence" required by Commission regulations since they are made by anonymous sources who do not identify the contributions. *Id.* If the allegations are insufficient to trigger a treasurer's regulatory responsibilities to determine the legality of a contribution based on information that was not available to the treasurer at the time the contribution was originally received, they certainly are not a sufficient basis for the Commission to make a reason to believe finding in enforcement proceedings. *See* MUR 4850 (Deloitte & Touche, LLP, *et al.*) Statement of Reasons at 2 ("During discussion of this issue in Executive Session, the General Counsel also stated that D & T's response suggested that it had not performed its own investigation of the matter. We find this inference irrelevant. A mere conclusory allegation without any supporting evidence does not shift the burden of proof to respondents."); *see also* MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A Smith, and Scott E. Thomas at 3 ("Absent personal knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation (*i.e.*, as to who supposedly made the payments, along with some reasonable basis for the belief), so as to warrant a focused investigation that prove or disprove the charge.").

Accordingly, there is no statutory or regulatory basis, or Commission precedent, for finding reason to believe based on these flawed allegations made by anonymous sources to a newspaper reporter that are simply repackaged into an FEC complaint by an individual with no personal knowledge. *See, e.g.*, MUR 5141 (James P. Moran, Jr., *et al.*) Statement of

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Reasons at 2 (“Unless based on a complainant’s personal knowledge, a source of information reasonably giving rise to a belief in the truth of the allegations must be identified.”); MUR 6296 (Kenneth R. Buck, *et al.*) Statement of Reasons at 5, n. 21 (“In this respect, the standard for finding reason to believe is higher than the Federal Rules of Civil Procedure 12(b)(6) standard – which allows discovery on virtually every complaint that states a potential legal or equitable claim.”); MUR 6371 (Friends of Christine O’Donnell, *et al.*) Statement of Reasons of Commissioners Caroline C. Hunter, Donald E. McGahn, and Matthew S. Petersen at 4 (“Therefore, under the Act, before making a reason-to-believe determination, the Commission must assess both the law and the credibility of the facts alleged.”).

II. The sole remaining allegation — made by the lone identified source in the entire New York Times article — involves conduct that does *not* violate the Act or Commission regulations.

The New York Times article and the complaint incorporating it contain just one on-the-record statement attributed to an identified individual, and that one attributed statement alleges conduct that does *not* constitute a violation of the Act or Commission regulations. Specifically, Yossi Zaga told the Times that then-candidate Michael Grimm and Ofer Biton, an Israeli citizen, “were together all the time during the campaign” and that “they would drive around together to the homes and offices and ask for contributions.” Compl. ¶ 8, Attachment.<sup>5</sup>

The complaint extrapolates from Yossi Zaga’s statement — without further basis or personal knowledge — that Mr. Biton thus “solicited and bundled contributions for Grimm

<sup>5</sup> Anonymous sources also supposedly told the New York Times that they contributed to the campaign because Mr. Biton told them that Rabbi Pinto wanted people in his congregation to do so. Compl. Attachment.

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in violation of 2 U.S.C. § 441e(a)(2).” Compl. ¶¶ 8-9.” See MUR 6056 (Protect Colorado Jobs, Inc.) Statement of Reasons of Commissioners Matthew S. Peterson, Caroline C. Hunter, and Donald F. McGahn at 6 n. 12 (“[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.”) (quoting MUR 5467 (Michael Moore), First General Counsel’s Report at 5). But, dispositively, the Act makes it unlawful only for foreign nationals to make contributions or donations or for other people to solicit, accept or receive a contribution or donation *from* a foreign national. 2 U.S.C. § 441e(a).

Indeed, Commission precedents make clear that the Act does not prohibit a foreign national from soliciting contributions to a federal campaign so long as he or she does so in a volunteer capacity and is not part of the campaign’s decision making processes. For example, in FEC Advisory Opinion 2004-26, the Commission held that a foreign national is permitted to solicit funds for a federal campaign committee, and other political committees, in a volunteer capacity. Specifically, the Commission held that Ms. Rios Sosa, a foreign national who is a Guatemalan citizen and does not have permanent residence status in the United States, was nevertheless permitted to engage in the following campaign activities:

First, the Commission concludes that Ms. Rios Sosa may attend Committee events, such as campaign rallies, debates, other public appearances, and fundraisers. Second, as an uncompensated volunteer, she may solicit funds from persons who are not foreign nationals. As an uncompensated volunteer, Mr. Rios Sosa may also give speeches at Committee events. Third, Ms. Rios Sosa may attend meetings with Representative Weller and Committee personnel regarding Committee events or political strategy. She may not, however, be involved in the management of the Committees.

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<sup>6</sup> Mr. Biton’s attorney denied that Mr. Biton ever raised money for the campaign. Specifically, Jeffrey A. Udell told the Times, “You asked, did he pick up checks for Grimm’s campaign, and the answer is categorically no.” Compl. Attachment. Therefore, Mr. Udell directly refuted the allegation that Mr. Biton picked up any contributions for the campaign. The complainant selectively omitted Mr. Udell’s refutation from the body of the complaint, diminishing his credibility and exposing the partisan purposes behind his filing.

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FEC Advisory Opinion 2004-26 at 3; *see also* MURs 5987, 5995 & 6015 (Hillary Clinton for President) (finding no reason to believe that the Clinton campaign violated the foreign national ban on soliciting contributions in connection with Sir Elton John's volunteer performance at a campaign fundraiser and using his name and likeness in a campaign fundraising electronic mail piece); MUR 5998 (John McCain for President) (finding no reason to believe that John McCain for President violated the foreign national fundraising ban in connection with a fundraiser held in England). In addition, the Commission has also concluded that foreign nationals may provide services such as lit drops, door-to-door canvassing, handing out literature, telephone banking, and get-out-the-vote activities to a federal campaign committee. FEC Advisory Opinion 2007-22; *see also* Advisory Opinion 1987-25 (concluding that a foreign national student was permitted to volunteer for a federal campaign committee). The Commission also has concluded that a campaign may hire foreign nationals to work as campaign staff. *See* FEC Advisory Opinion 2007-22.

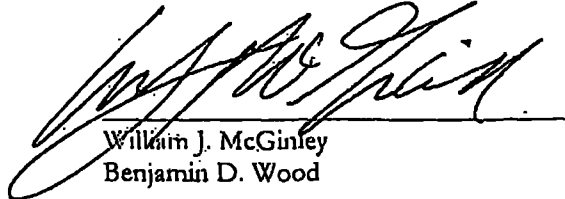
Here, the complaint alleges only that Mr. Biton solicited contributions. Based on the Commission's clear precedents, that conduct is not unlawful. Significantly, there are no sourced allegations anywhere in the complaint or the New York Times article that allege activities falling outside the boundaries the Commission has established for permissible foreign national activities. Thus, even the Yossi Zaga allegation — the sole disclosed source in the article — cannot sustain the complaint here because it does not describe any violation of the Act or Commission regulations. *See* 11 C.F.R. § 111.4(d)(3).

#### **CONCLUSION**

The Complaint fails to satisfy the minimum requirements of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, and thus is legally insufficient to support a reason to believe finding. The Act mandates — and Commission precedents hold — that anonymous sources in a

newspaper article are not a sufficient basis for the Commission to make a reason to believe finding. Moreover, the one source identified in the New York Times article does not allege activities that constitute a violation of the Act or Commission regulations. For the reasons set forth above, the Commission must follow the Act and adhere to its precedents by finding no reason to believe, taking no further action, and closing the file.

Respectfully submitted,



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